

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
OFFICE OF SPECIAL MASTERS  
No. 05-997V  
Filed: August 2, 2013**

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MICHAEL DIXON and  
MARGARET DIXON, parents of  
MICHAEL CHRISTOPHER DIXON,  
a minor,

Petitioners,

v.

SECRETARY OF HEALTH  
AND HUMAN SERVICES,

Respondent.

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Autism; Failure to Prosecute;  
Failure to Follow Court Orders;  
Dismissal

**DECISION<sup>1</sup>**

On September 15, 2005, Michael Dixon and Margaret Dixon [“petitioners”] filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> [the “Vaccine Act” or “Program”], on behalf of their minor son Michael C. Dixon [“Michael”].

On November 16, 2012, I ordered petitioners to file a status report addressing their expert’s preliminary review and proposing a timeline for expert reports. Since that order, petitioners requested and received several extensions of time to produce a substantive response.<sup>3</sup>

On June 12, 2013, I ordered petitioners to file a substantive status report

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<sup>1</sup> Because this unpublished decision contains a reasoned explanation for the action in this case, I intend to post this decision on the United States Court of Federal Claims’ website, in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, § 205, 116 Stat. 2899, 2913 (codified as amended at 44 U.S.C. § 3501 note (2006)). In accordance with Vaccine Rule 18(b), petitioners have 14 days to identify and move to delete medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will delete such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755 (1986). Hereinafter, for ease of citation, all “§” references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2006).

<sup>3</sup> Petitioners requested additional time on January 2, 2013, February 19, 2013, and April 8, 2013, June 1, 2013, and June 7, 2013.

regarding their expert's review and the production of an expert report or otherwise show cause for why this case should not be dismissed. In a status report, filed June 18, 2013, petitioners indicated that "the record is not completely sufficient at the present time to conclude that Michael probably has a mitochondrial disorder," and that their expert, Dr. Kendall, had recommended further testing. Petitioners' counsel added that further discussions with petitioners were necessary to make an informed decision regarding how to proceed.

On June 26, 2013, I issued an order affording petitioners an additional opportunity to show cause why I should not dismiss this case for failure to prosecute. I emphasized that petitioners' status report did not comply with my June 12, 2013 order to show cause, noting that they had failed to propose a timeline for the production of an expert report. Additionally, as I reminded petitioners in my order, a failure to follow court orders, as well as failure to file medical records or an expert medical opinion, would result in dismissal of petitioners' claim. *Tsekouras v. Sec'y, HHS*, 26 Cl. Ct. 439 (1992), *aff'd per curiam*, 991 F.2d 810 (Fed. Cir. 1993); *Sapharas v. Sec'y, HHS*, 35 Fed. Cl. 503 (1996); Vaccine Rule 21(b).

On July 27, 2013, petitioners filed a motion requesting additional time to respond to my June 26, 2013 order to show cause. In their motion, petitioners noted that they "have been unsuccessful to date in obtaining positive testing or an expert report that will allow them to prosecute their petition." Over eight months have passed since petitioners were first ordered to file a status report addressing the production of an expert report. Based on petitioners' failure to produce an expert report, or, in the least, provide a substantive response addressing the production of an expert report, petitioners' motion for additional time to show cause why their case should not be dismissed for failure to prosecute is DENIED.

**Accordingly, this case is dismissed for insufficient proof and for failure to prosecute. The clerk shall enter judgment accordingly.**

**IT IS SO ORDERED.**

**s/Denise K. Vowell**  
**Denise K. Vowell**  
Special Master